DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

7-12-00

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[redacted]

Dear [redacted]:

This responds to your letter of June 15, 2000, asking for a ruling regarding whether your home and 26 acres would qualify as your residence for purposes of the exclusion available under § 121 of the Internal Revenue Code. In your letter, you state that the 26 acres consist of untillable land, and you have had no income from using this acreage.

When a determination regarding the tax effects of a proposed transaction cannot be made based on clearly established tax law, generally a taxpayer may request a private letter ruling pursuant to Rev. Proc. 2000-1, 2000-1 I.R.B. 4, which interprets and applies the tax laws to the taxpayer's specific set of facts. Once a private letter ruling is issued, a taxpayer ordinarily may rely on its conclusions regarding the tax effects of the taxpayer's transactions. However, the issue of whether property qualifies as the taxpayer's principal residence under § 121 is an area in which rulings will not be issued by the Internal Revenue Service because of the factual nature of the problem involved. See § 3.01(6) of Revenue Procedure 2000-3, 2000-1 I.R.B. 103. Therefore, we cannot provide a ruling determining whether your home and 26 acres may be considered your residence for purposes of the exclusion provided under § 121. The following is a discussion of the well-established tax law concerning the treatment of gain from the sale of a taxpayer's principal residence that may be of use to you.

Under the general rules of § 121, a taxpayer may exclude up to $ 250,000 of gain on the sale or exchange of property if that property was owned and used as the taxpayer's principal residence for an aggregate period of 2 years or more during the 5-year period ending on the date of the sale or exchange. The full exclusion is available only once every 2 years.

Section 121(b)(2) provides a special rule for joint returns. Under this special rule, a husband and wife who make a joint return for the taxable year of the sale or exchange of the property may exclude up to $ 500,000 of gain if: (1) either spouse owned the property for at least 2 years during the 5-year period; (2) both spouses used the property as their principal residence for at least 2 years during the 5-year period; and (3) neither spouse used the § 121 exclusion during the last 2 years.

Section 121 does not prescribe how many acres can qualify as a taxpayer's residence. Generally, whether or not any property is used by a taxpayer as the taxpayer's residence depends upon all the facts and circumstances in each individual case, including the good faith of the taxpayer. See § 1.121-3(a) of the Income Tax Regulations. This means that the amount of acreage that may constitute part of your residence depends upon how you actually used your home and 26 acres during the 5-year period ending on the date of the sale or exchange. If part of the property was used as your residence and part was used for business purposes or the production of income, only the portion of the gain allocable to the residential use is entitled to the § 121 exclusion.

I hope this information has been helpful. For more information on the § 121 exclusion, see Publication 523, Selling Your Home. This publication may be obtained on the Internet at www.irs.ustreas.gov or by calling 1-800-TAX-FORM (1-800-829-3676). If you have additional questions, please contact Sara P. Shepherd, Badge Number 50-11377, at (202) 622-4910.

Sincerely,

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DAVID B. AUCLAIR
Senior Technician Reviewer, Branch 1
(Administrative Provisions & Judicial Practice)